

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ROBERT L. HILLMAN,

Plaintiff,

vs.

Civil Action 2:12-cv-850  
Judge Frost  
Magistrate Judge King

WILLIAM JOSEPH EDWARDS,  
*et al.*,

Defendants.

OPINION AND ORDER

Plaintiff, a state inmate, sought to initiate this action without prepayment of fees or costs. On September 21, 2012, the Magistrate Judge issued a *Report and Recommendation*, Doc. No. 2, recommending that plaintiff's application for leave to proceed *in forma pauperis* be denied. Specifically, the Magistrate Judge concluded that plaintiff was prohibited from proceeding *in forma pauperis* under 28 U.S.C. § 1915(g) (also known as the "3-Strikes Provision"). Plaintiff has filed timely objections, Doc. No. 4, and a motion to supplement the objections because of an inadvertent failure to attach an exhibit mentioned in the objections. Doc. No. 5. Plaintiff's motion to supplement the objections, Doc. No. 5, is **GRANTED**. For the reasons that follow, plaintiff's objections are **OVERRULED**. The *Report and Recommendation*, Doc. No. 2, is **ADOPTED** and **AFFIRMED**.

The Prison Litigation Reform Act ["PLRA"] prohibits the grant of leave to proceed *in forma pauperis* under certain circumstances:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if

the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). The Magistrate Judge concluded that plaintiff "has, on at least 3 occasions, brought an action in this Court that was dismissed for failure to state a claim upon which relief can be granted. *Hillman v. Simms*, 2:09-cv-810 (S.D. Ohio December 3, 2009); *Hillman v. Simms, et al.*, 2:08-cv-717 (S.D. Ohio March 11, 2009); *Muff, et al. v. Collins*, 2:08-cv-1[0]27 (S.D. Ohio January 29, 2009)." *Report and Recommendation*, pp. 1-2.

Plaintiff objects to the *Report and Recommendation* on the basis that *Muff v. Collins*, 2:08-cv-1027 (S.D. Ohio January 29, 2009), cannot be his "third strike" for purposes of 28 U.S.C. § 1915(g).<sup>1</sup> Plaintiff argues that there is "nothing in the records of the Court that (Hillman) Plaintiff consented to inmate Muff using his name in said legal proceeding, or any request made by (Hillman) Plaintiff in the proceeding." Doc. No. 4, p. 6. To the contrary, plaintiff was a named plaintiff in *Muff v. Collins*, 2:08-cv-1027 (S.D. Ohio January 29, 2009), and the *Complaint* in that case, Doc. No. 4, bears plaintiff's signature. *Id.* at 9, 11. That civil action was also dismissed for failure to state a claim upon which relief may be granted. *See Muff v. Collins*, No. 2:08-cv-1027, 2009 WL 233561, at \*3

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<sup>1</sup> Plaintiff also objects on the basis that *Hillman v. Simms, et al.*, 2:08-cv-1089; *Hillman v. Edwards*, 2:11-cv-501; and *Hillman v. O'Brien, et al.*, 2:11-cv-607, should not be counted against him for purposes of the 3 Strike Rule. The Magistrate Judge did not, however, count any of these cases against plaintiff for purposes of the 3 Strike Rule. *See Report and Recommendation*, p. 2 n.1.

(S.D. Ohio Jan. 29, 2009). Accordingly, *Muff v. Collins*, 2:08-cv-1027 (S.D. Ohio January 29, 2009), is the third action brought by plaintiff in this Court during his incarceration that was dismissed for failure to state a claim upon which relief can be granted.<sup>2</sup> Plaintiff is therefore prohibited under 28 U.S.C. § 1915(g) from proceeding *in forma pauperis* in this action.

Pursuant to 28 U.S.C. § 636(b)(1), this Court has conducted a *de novo* review of the *Report and Recommendation*. This Court has carefully considered the entire record. For the foregoing reasons and for reasons detailed in the Magistrate Judge's *Report and Recommendation*, plaintiff's objections, Doc. No. 4, are **OVERRULED**. The *Report and Recommendation*, Doc. No. 2, is **ADOPTED** and **AFFIRMED**. Plaintiff's motion for leave to proceed *in forma pauperis*, Doc. No. 1, is **DENIED**.

If plaintiff intends to pursue this action, he must pay the full \$350.00 filing fee within thirty (30) days. His failure to do so will result in the dismissal of the action for failure to prosecute.

/s/ Gregory L. Frost  
Gregory L. Frost  
United States District Judge

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<sup>2</sup>Plaintiff does not object to the Magistrate Judge's conclusion that *Hillman v. Simms*, 2:09-cv-810 (S.D. Ohio December 3, 2009), and *Hillman v. Simms, et al.*, 2:08-cv-717 (S.D. Ohio March 11, 2009), count against him for purposes of 28 U.S.C. § 1915(g). Plaintiff also does not object to the conclusion that the claims sought to be asserted in this action do not suggest that he is under imminent danger of serious physical injury.